

ESTTA Tracking number: **ESTTA1004274**

Filing date: **09/24/2019**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91239589
Party	Defendant Bowmaker's Whiskey Company
Correspondence Address	THEODORE A BREINER BREINER & BREINER LLC 115 NORTH HENRY STREET ALEXANDRIA, VA 22314-2903 UNITED STATES Docketclerk@bbpatlaw.com, tbreiner@bbpatlaw.com, Elisedelat- orre@bbpatlaw.com 703-684-6885
Submission	Opposition/Response to Motion
Filer's Name	THEODORE A. BREINER
Filer's email	tbreiner@bbpatlaw.com, Docketclerk@bbpatlaw.com, Elisedelat- orre@bbpatlaw.com
Signature	/Theodore A. Breiner/
Date	09/24/2019
Attachments	Applicants Opposition To Opposers Motion For Extension of Time To Submit Response To Motion For Summary Judgment 9-24-19.pdf(1537949 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MAKER’S MARK DISTILLERY, INC.,)	
)	
Opposer,)	
)	Opposition No. 91239589
v.)	
)	
)	USSN 87/383,989
)	Mark: BOWMAKER’S WHISKEY
BOWMAKER’S WHISKEY COMPANY,)	
)	
Applicant.)	

APPLICANT’S OPPOSITION TO OPPOSER’S MOTION FOR EXTENSION
OF TIME TO SUBMIT RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Applicant Bowmaker’s Whiskey Company (“applicant”) hereby opposes opposer Maker’s Mark Distillery, Inc.’s (“opposer”) motion for an extension of time to submit a response to applicant’s motion for summary judgment. The Board set the response date for opposer to respond to applicant’s motion for summary judgment for September 30, 2019 by the Board’s Order dated July 2, 2019. Opposer has had more than sufficient time to prepare a response to applicant’s motion for summary judgment which has been pending for ten months and is limited to no likelihood of confusion between applicant’s trademark BOWMAKER’S WHISKEY and opposer’s trademarks MAKER’S MARK; MAKER’S 46; MAKER’S; and MAKER’S MARK PRIVATE SELECT. Opposer has had ten months to review its internal documents and has not stated why such review requires additional time, and opposer has set forth no factual details with respect to the prior commitments of counsel.

See Luemme Inc. v. D.B. Plus Inc., 53 USPQ2d 1758, 1761 (TTAB 2000) (requiring detailed information on prior commitments).

In preface, applicant normally would have granted the extension request as a courtesy to counsel for opposer. However, this case does not involve normal circumstances, including because (1) opposer has not been diligent in this case in pursuing discovery or settlement as set forth in “Applicant’s Opposition To Opposer’s Rule 56(d) Motion” (13 TTABVUE); (2) applicant respectfully submits that opposer has done everything in this case to extend the time and make the case as expensive as possible for applicant, a small company of primarily one person;¹ (3) opposer refused to accord the same courtesy to applicant when applicant requested that the deposition of Mr. Parks be conducted in Alexandria, Virginia as opposed to Michigan to save substantial expense to applicant (see attached Exhibit 1, communications between counsel on this issue); (4) opposer needlessly noticed the deposition of Mr. Parks for videotape when this is not allowed by the Board’s rules (see Exhibit 1); and (5) applicant was required to incur expenses of more than \$10,000 for the deposition of applicant which lasted a mere fifty minutes and a number of the questions were outside of the scope of the Board’s July 2, 2019 Order.

Applicant respectfully submits that there is no reason for a further delay in these proceedings and opposer has not set forth a proper basis for granting the extension as required by TBMP §509.01(a).² The response to the motion for summary judgment is straight forward and the motion has been pending for ten months. Counsel references its need to review internal documents without stating what documents or why the review was

¹ Applicant has been required to expend substantial resources to defend the case, resources which could have been spent on its business. Responding to this motion is another unwarranted expense.

² The extra time requested by opposer must not be too critical as opposer did not request the extension earlier and it took opposer ten days to file the motion after applicant did not consent.

not done over the last ten months. Additionally, opposer has not produced any documents in this case to applicant in response to applicant's request for production of documents and any such documents that will be objected to by applicant and should be excluded. Opposer references "prior commitment of counsel" for opposer without stating with any specificity the nature of the commitments; when these commitments arose; why the motion was not filed earlier; and if the commitments arose prior to the Board's July 2, 2019 Order. Additionally, as set forth above, opposer refused to accommodate applicant's request that that the deposition of Mr. Parks be held in Alexandria, Virginia to save substantial expense for applicant.

For the foregoing reasons, applicant respectfully requests that opposer's motion be denied.

Respectfully submitted,

BOWMAKER'S WHISKEY COMPANY

By /Theodore A. Breiner/
Theodore A. Breiner
Registration No. 32,103
BREINER & BREINER, L.L.C.
115 North Henry Street
Alexandria, Virginia 22314-2903
Telephone (703) 684-6885

Attorneys for Applicant
Bowmaker's Whiskey Company

September 24, 2019

CERTIFICATE OF SERVICE

It is hereby certified that on this 24th day of September 2019, a true copy of
the foregoing paper entitled –

APPLICANT’S OPPOSITION TO OPPOSER’S MOTION FOR EXTENSION
OF TIME TO SUBMIT RESPONSE TO MOTION FOR SUMMARY JUDGMENT

was served by email on -

Michael D. Adams
MAYER BROWN LLP
P.O. BOX 2828
Chicago, Illinois 60690-2828
michaeladams@mayerbrown.com
rassmus@mayerbrown.com
gbarcelona@mayerbrown.com

/Theodore A. Breiner/
THEODORE A. BREINER

Ted Breiner

From: Ted Breiner
Sent: Monday, July 22, 2019 9:35 AM
To: Assmus, Richard M.
Cc: Adams, Michael D.; Virtue, Daniel
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Rich,

Thank you. The email will suffice to record the parties' agreement.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

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From: Assmus, Richard M. <RAssmus@mayerbrown.com>
Sent: Monday, July 22, 2019 9:32 AM
To: Ted Breiner <TBreiner@BBPatLaw.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted—

We reserve our right to use video at a later deposition, but we will cancel the videographer for the coming deposition. Let me know if you require an amended notice or if this email will suffice.

Rich

++++
Richard M. Assmus
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 701-8623
rassmus@mayerbrown.com

From: Ted Breiner <TBreiner@BBPatLaw.com>
Sent: Monday, July 22, 2019 8:29 AM
To: Assmus, Richard M. <RAssmus@mayerbrown.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

****EXTERNAL SENDER****

Rich,

Please let me know whether you will withdraw the notice to take the deposition by videotape by 10 am ET, otherwise I will call the Board to ask if they can address the issue.

Applicant's objections include that it is not allowed under the Board rules, it adds time to the deposition, the cost and the privacy issues since it cannot be used in any manner in this case.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

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From: Assmus, Richard M. <RAssmus@mayerbrown.com>
Sent: Monday, July 22, 2019 8:49 AM
To: Ted Breiner <TBreiner@BBPatLaw.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted—

We read the rule as prohibiting the submission of video, but not recording in that manner. However, we are amenable to addressing your concern. Is the objection solely to the cost?

Rich

++++
Richard M. Assmus
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 701-8623
rassmus@mayerbrown.com

From: Ted Breiner <TBreiner@BBPatLaw.com>
Sent: Saturday, July 20, 2019 4:11 PM
To: Assmus, Richard M. <RAssmus@mayerbrown.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

****EXTERNAL SENDER****

Rich,

Responsive to the email below and the Maker's Mark notice of deposition of Mr. Parks, applicant objects to the deposition being noticed and taken by videotape. This is not allowed by the Board's rules. See TBMP 703.01(h). Since this is not allowed by the Board's rules, it is a waste of time and money to have the deposition taken both stenographically and by videotape. Please confirm that Maker's Mark agrees to amend the notice of deposition to withdraw the notice to take the deposition by videotape. Applicant reserves all rights, including to object at the deposition and request a protective order from the Board (which will need to be done by telephone on Monday due to my travel for the deposition).

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

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From: Assmus, Richard M. <RAssmus@mayerbrown.com>
Sent: Friday, July 12, 2019 4:59 PM
To: Ted Breiner <TBreiner@BBPatLaw.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted—

And to answer your other question, we do intend to videotape it.

Rich

From: Assmus, Richard M.
Sent: Friday, July 12, 2019 3:55 PM
To: 'Ted Breiner' <TBreiner@BBPatLaw.com>

Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted—

If you need to start at 9am, we can accommodate that. Note that Chicago is Central time, but that when you get to Michigan you gain the hour back and have returned to Eastern time. Let's plan on 2 hours to be safe.

Please do provide the discovery responses the week prior – by the 19th is fine.

Rich

From: Ted Breiner <TBreiner@BBPatLaw.com>
Sent: Friday, July 12, 2019 3:44 PM
To: Assmus, Richard M. <RAssmus@mayerbrown.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

****EXTERNAL SENDER****

Rich,

I am conferring with the client on the matter, including bringing this to the Board for a decision. After the client makes a decision, I will let you know whether a telephone conference is in order.

I have also now looked at flights to Kalamazoo, about 4 hours from gate to gate. For preparation purposes, how long do you expect to be with the deposition? Depending, we may want to start at 9 am to make sure I can make the flight out of Kalamazoo.

Also, please advise whether the deposition will be by videotape.

Lastly, we offered to provide our discovery responses by the 17th if we had the deposition during the week of the 22nd. You did not specifically respond. Is that what you are expecting? Based on our review to date, there are very few documents. As discussed, the document production and discovery responses are not part of the Board's order defining the scope of the deposition of Mr. Parks.

Please get back to me today as I will be working on this over the weekend.

Thank you and have a nice weekend.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

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so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Elise de la Torre at 703-684-6885 or e-mail Elisedelatorre@bbpatlaw.com if you need assistance.

From: Assmus, Richard M. <RAssmus@mayerbrown.com>
Sent: Friday, July 12, 2019 1:42 PM
To: Ted Breiner <TBreiner@BBPatLaw.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted—

We are happy to discuss by phone if that would be helpful, but having considered the facts here we are not inclined to agree to fly to DC to take the deposition of Mr. Parks given that he resides less than 150 miles by car from our offices and the applicable rule for the place of deposition dictates that it be taken where he resides. We have chosen a location that is a 30-minute drive for him to a nearby city (Kalamazoo). Mr. Parks has the right to choose counsel based in the DC area, but we don't believe he has the right to impose additional travel burden on us by virtue of that choice.

Rich

++++
Richard M. Assmus
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 701-8623
rassmus@mayerbrown.com

From: Ted Breiner <TBreiner@BBPatLaw.com>
Sent: Wednesday, July 10, 2019 5:33 PM
To: Assmus, Richard M. <RAssmus@mayerbrown.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

****EXTERNAL SENDER****

Rich,

Maker's Mark is the party requesting the deposition which, as stated in our opposition to your Rule 56 motion, is not justified for six sentences and two exhibits. You knew that you would have be out of the office.

You state that: this isn't just about expense -- travelling to DC will prevent our attending to other matters. We don't believe it is reasonable to suggest we fly to DC to take a short deposition of a witness that is a reasonable drive from our office.

However, travelling to Kalamazoo is about the expense to Bowmaker's, in excess of \$10,000, and the travel will prevent me from attending to other matters. We don't believe it is reasonable to suggest that I fly from DC to Kalamazoo, flight time 4 hours each way not counting getting to the airport and through security, to take a short deposition of Mr. Parks on the six sentences of his declaration. Your justification is that it is okay for

Bowmaker's to incur the expense and take me from other matters, but not you the party requesting the deposition.

Please reconsider.

If you do not agree, we will consider getting the interlocutory attorney on the telephone and give her this email chain and let her decide.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

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From: Assmus, Richard M. <RAssmus@mayerbrown.com>
Sent: Wednesday, July 10, 2019 6:17 PM
To: Ted Breiner <TBreiner@BBPatLaw.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted—

We've amended the notice to spell Mr. Parks' first name correctly.

With respect to the location, this isn't just about expense -- travelling to DC will prevent our attending to other matters. We don't believe it is reasonable to suggest we fly to DC to take a short deposition of a witness that is a reasonable drive from our office.

Rich

From: Ted Breiner <TBreiner@BBPatLaw.com>
Sent: Wednesday, July 10, 2019 3:41 PM
To: Assmus, Richard M. <RAssmus@mayerbrown.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

****EXTERNAL SENDER****

Rich,

Mr. Parks has requested that the deposition be in Alexandria because it is not inconvenient for him and it will be less expensive for him if I don't have to travel.

Maker's Mark brought this action and has requested the deposition. Maker's Mark has spared no expense to date and the expense of deposing counsel is not a proper basis for rejecting Mr. Parks' request. We trust that this entire exercise is not meant to harass a small company and make this case as expensive as possible.

We again request that you reconsider and agree to Mr. Parks' request.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

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From: Assmus, Richard M. <RAssmus@mayerbrown.com>
Sent: Wednesday, July 10, 2019 4:29 PM
To: Ted Breiner <TBreiner@BBPatLaw.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted—

We understand Mr. Parks resides just southwest of Kalamazoo, Michigan. Correct us if that's mistaken. Kalamazoo is a very reasonable drive from Chicago (a little over 2 hours, I've done it many times), and will impose the least amount of travel on the witness. Taking the deposition where the deponent resides is the rule, absent agreement (TMEP 404.03(a)).

Instead, you propose that Mr. Parks and us all fly to DC, a trip that door-to-door is easily 5 hours at best and risks all the vagaries of travel such as weather, etc., not to mention the out-of-pocket costs of ground transportation and airlines.

We understand that Mr. Parks is willing to travel for the deposition, which is fine. In that case, we are open to having him come to Chicago, which would save you the drive to Kalamazoo.

Rich

++++
Richard M. Assmus
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 701-8623
rassmus@mayerbrown.com

From: Ted Breiner <TBreiner@BBPatLaw.com>
Sent: Wednesday, July 10, 2019 3:16 PM
To: Assmus, Richard M. <RAssmus@mayerbrown.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

****EXTERNAL SENDER****

Rich,

I thought we were still talking to work out the location of the deposition by agreement and not by Maker's Mark saying where it is to occur, in accord with the Board's admonition in footnote 6 of the July 2 Order. Please advise why you will not agree to Mr. Parks request that the deposition be held in Alexandria? We have stated that this is his preferred location and that it will be less expensive for applicant that the deposition in Kalamazoo. We will thereafter consider your reason(s) and decide whether to contact the Board for a decision.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

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From: Assmus, Richard M. <RAssmus@mayerbrown.com>
Sent: Wednesday, July 10, 2019 4:09 PM
To: Ted Breiner <TBreiner@BBPatLaw.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted—

In the meantime, attached is the notice of deposition. We have tentatively indicated a location in Kalamazoo that is a 30 minute drive from the business address for Bowmaker's.

Rich

From: Assmus, Richard M.
Sent: Wednesday, July 10, 2019 2:45 PM
To: 'Ted Breiner' <TBreiner@BBPatLaw.com>

Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>

Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted, can you let us know exactly where Mr. Parks is coming from geographically? His Facebook map function points to a location near Kalamazoo, but a Google search of the same address puts him a lot further north. Is his business address as follows:

2626 N. Decker Road
Lake City, Michigan 49651

From: Ted Breiner <TBreiner@BBPatLaw.com>

Sent: Wednesday, July 10, 2019 11:56 AM

To: Assmus, Richard M. <RAssmus@mayerbrown.com>

Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>

Subject: RE: Maker's Mark v. Bowmaker's Whiskey

****EXTERNAL SENDER****

Rich,

You are not proposing the most convenient place for Mr. Parks. He has requested that the deposition be held in Alexandria or DC. As stated, there is little time difference for you to come to Alexandria or Kalamazoo. If you will not agree to Mr. Parks request as to the location in Alexandria, we will consider contacting the Board and asking for a telephone conference to decide the issue. We note the Board's footnote 6 for the parties to cooperate. In this instance, the witness should be given the accommodation of his choice of deposition location. Thank you for your reconsidering the issue.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

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From: Assmus, Richard M. <RAssmus@mayerbrown.com>

Sent: Wednesday, July 10, 2019 12:47 PM

To: Ted Breiner <TBreiner@BBPatLaw.com>

Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>

Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted—

We can't agree to fly to DC for this given that our offices and Mr. Parks are so close. We are proposing the most convenient place for him and one that accords with the rules – see TMEP 404.03(a).

As an accommodation, we are willing to take it in Chicago to avoid your needing to make the drive to Kalamazoo. Mr. Parks was going to need to drive about that far anyway to get to Detroit's Metro airport.

Rich

From: Ted Breiner <TBreiner@BBPatLaw.com>
Sent: Wednesday, July 10, 2019 11:16 AM
To: Assmus, Richard M. <RAssmus@mayerbrown.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

****EXTERNAL SENDER****

Rich,

I will confirm the 24th again with Mr. Parks, but this should be fine.

We again request that the deposition be taken in Alexandria or DC. Mr. Parks prefers these locations as to I. There is no easy flight for me to Kalamazoo and Mr. Parks does not mind the travel. Additionally, it will save Mr. Parks expense for my travel. We understand that it is about a 2.5 to 3 hour drive for you from Chicago to Kalamazoo, about the same as a flight from Chicago to Reagan National. Since it is Maker's Mark who is requesting the deposition, we request that you honor Mr. Parks request for the deposition in Alexandria or DC. Please confirm that this is acceptable.

Thank you.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

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From: Assmus, Richard M. <RAssmus@mayerbrown.com>
Sent: Wednesday, July 10, 2019 11:03 AM
To: Ted Breiner <TBreiner@BBPatLaw.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted—

Given that Mr. Parks appears to be just outside of Kalamazoo and I can see Michigan from my office on a clear day, we don't see having both us and Mr. Parks flying to DC for a short deposition. We can notice it for Kalamazoo to make it convenient for Mr. Parks. We can also notice it for Chicago if you'd prefer that. July 24 will work.

Rich

From: Ted Breiner <TBreiner@BBPatLaw.com>
Sent: Tuesday, July 09, 2019 3:01 PM
To: Assmus, Richard M. <RAssmus@mayerbrown.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

****EXTERNAL SENDER****

Hi Rich,

I just left you a voice mail to call me and try and schedule a convenient date for all parties.

I have conflicts the week of the 29th, daughter seeing neurosurgeon on the 29th out of town and moving her into new living quarters at VA Tech at the end of the week. I may be able to get out of the latter. Mr. Parks would prefer July 23-25. Does July 23-25 work for you? If not, will July 29 or Aug. 1 or 2 work and I will not be involved in the move. Later dates in August are not good for Mr. Parks.

You are correct that our discovery responses are due by July 22, although the responses and document production are not part of the Board scope of Mr. Parks' deposition. Notwithstanding, if we can have the deposition on July 23-25, we will get you the responses by July 17.

On location, Mr. Parks is in Michigan. However, we propose Alexandria or DC because it is more convenient. Mr. Parks advised that the closest major airport is Detroit and it is a 2.5 hour drive from there. If you are taking the deposition, flying from Chicago to Washington will be more convenient.

Let's try and get the deposition scheduled this week.

Thank you.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

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From: Assmus, Richard M. <RAssmus@mayerbrown.com>
Sent: Monday, July 8, 2019 1:55 PM
To: Ted Breiner <TBreiner@BBPatLaw.com>

Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted—

By our count, the written discovery responses are due on July 22. We propose to take the deposition the week of July 29. We don't expect the deposition to be lengthy, and we can discuss a convenient start time in light thereof, but we don't at this time have an estimate of the total time needed. Once we've landed on a date and time, we will issue a notice.

As to the location, where does Mr. Parks reside? We assumed Michigan.

Rich

+++++
Richard M. Assmus
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 701-8623
rassmus@mayerbrown.com

From: Ted Breiner <TBreiner@BBPatLaw.com>
Sent: Monday, July 08, 2019 10:58 AM
To: Assmus, Richard M. <RAssmus@mayerbrown.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>; Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: Maker's Mark v. Bowmaker's Whiskey

****EXTERNAL SENDER****

Hi Rich,

Hope you are well.

We are writing on the deposition of Mr. Parks and the Board's July 2, 2019 order authorizing his limited deposition on:

Opposer may take the Rule 56(d) discovery deposition of Mr. Parks. The deposition must be limited to the topics raised in the deponent's declaration and may include testimony regarding any document/exhibit attached to the declaration.

As you are aware, Mr. Parks declaration was quite short, six sentences, and he testified that:

1. I am a Manager of applicant Bowmaker's Whiskey Company having a place of business in Schoolcraft, Michigan ("Applicant"). I have personal knowledge of the facts set forth in this declaration unless otherwise stated.

2. As a hobby, I am a bowmaker. In other words, I make bows for archery. Based on this hobby, I selected the name BOWMAKER'S WHISKEY for the distilled spirits, whiskey and bourbon which Applicant intends to offer under the trademark BOWMAKER'S WHISKEY.

3. Attached hereto as Exhibits 1 and 2 are samples of labels which Applicant has designed for the BOWMAKER'S WHISKEY products.

Please let us know if you intend to take his deposition and the dates you propose. His deposition must be taken by August 16, and we and Mr. Parks would like to set the date at this time for planning purposes and as you know the time will move quickly. We will make Mr. Parks available for deposition in Alexandria, Virginia. We assume you will only need an hour or so.

Thanks and please confirm receipt of this email.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

Exhibit A

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